IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

**

J U D G M E N T

State of Rajasthan & ars. Vs. Narayan Singh (Deceased) And ors.

D.B.CIVIL SPECIAL APPEAL NO. 881/2005 IN S.B.CIVIL WRIT PETITION NO. 6145/1991.

Date of Order : September 06,2006.

P R E S E N T
HON'BLE MRS.JUSTICE GYAN SUDHA MISRA

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.G.S.Gill,AAG for the State-appellant.
Mr.P.S.Sirohi, for the the respondent.

BY THE COURT: (PER HON'BLE MR.KOTHARI,J)

This appeal has been filed by State against the Judgment of learned Single Judge affirming the order of Rajasthan Civil Service Appellate Tribunal allowing the appeal of the respondent Narayan Singh. Though the appeal was barred by limitation by 274 days when initially filed and delay was sought to be explained by the State on the ground that after the judgment of learned Single Judge, respondent had expired and the State Authorities took time to ascertain the details of legal heirs of deceased-respondent and, therefore, delay occurred, this court was pleased to condone the delay and take legal heirs of respondent no.1 on record vide order dated 6.9.2005.

Having heard learned counsel and after considering the rival submissions, we are of the view that there is no force in the present appeal of the State and the Tribunal vide detailed order had rightly arrived at the

conclusion that respondent no.1 working as Asstt. Inspector was entitled to be given promotion on the post of Inspector notwithstanding the fact that he had not acquired the qualification of graduation from recognized university. Quoting the rule 23 of the Rules of 1959, the Tribunal held as under:

> **"23. Qualification of Inspectors: No person shall be appointed as Inspector unless he:-**
>
> **(i)is a graduate of recognized University preferably in Science or Engineering, or holds a recognized diploma in Engineering;**
>
> **(ii)is able to speak, read and write one of the regional languages of the State and**
>
> **(iii)on selection has satisfactorily completed at least six weeks' training in department of Government responsible for the Enforcement of Weights and Measures;**
>
> **Provided that in case of Assistant Inspectors the academic qualification, prescribed above shall be Matriculation preferably with science.**
>
> **(2)Nothing in sub-rule (1) shall apply to persons who has been working as Inspectors for a period of not less than a year immediately before the commencement of these rules;**
>
> **As reading of sub-rule (2) of the 1959 Rules makes it clear that educational qualification of graduation was not required for the persons who**

were working as Assistant Inspectors for a period of at least one year immediately before the commencement of these Rules. The Rules come into force with effect from 17.9.1995. The appellate had been confirmed as Assistant Inspector (W&M) with effect from 22.2.1958. It is thus, clear that he had completed one year's service when the Rules came into force. It is pertinent to note that under Rule 2(b) of the Rules “Inspector” has been defined and 'Assistant Inspector' is included in the definition. Therefore, even if the appellant was absorbed as Assistant Inspector and confirmed on that post with effect from 22.2.1958 he will be deemed to have been entitled to be appointed as Inspector for the purposes of Rule 23 of the Rules. That being so, the fact that the appellate was not a graduate could not come in way for the promotion of the appellant to the post of Inspector. It is significant to point out that for Assistant Inspectors academic qualification prescribed was only matriculation and the appellate was matriculate. The respondents cannot be allowed to say that since in the 1959 Rules there is no provision of promotion of the Assistant Inspectors the appellant is not entitled to promotion to the post of Inspector. It is not disputed that Assistant

> **Inspectors were given promotions in the year 1964. If those persons could be given promotion when 1959 Rules were in force then there should have been no difficulty in giving promotion to the appelant. He could not be discriminated on the ground that he was only a matriculate."**

The aforesaid order of the Tribunal was affirmed by the learned Single Judge while dismissing the writ petition filed by the State and the learned Single Judge held that the order of the Tribunal be implemented within a period of 60 days from the date of receipt of certified copy of this order because the same could not be implemented for long period of 13 years on account of interim order passed at the time of admission of writ petition.

We are, thus of the opinion that in view of proviso to Rule 23 of the Rules of 1959, it was not necessary for the respondent no.1 who had been confirmed as Assistant Inspector (W&M) w.e.f. 22.2.1958 to have acquired the qualification of graduation as contended by learned Addl. Adv. General Mr.Gill and it was sufficient in view of said proviso to have the qualification of matriculation only. This was not disputed before us that the respondent no.1 was a matriculate and was confirmed as Assistant Inspector w.e.f. 22.2.1958. Therefore, in view of said rule, the order of the Tribunal as also Judgment of learned Single Judge are not required to be interferred with.

Consequently, we do not find any force in this appeal and same is hereby dismissed. No order as to costs.

(Dr.VINEET KOTHARI)J. **(MRS.GYAN SUDHA MISRA),J**

s.rawat/-